

REMARKS

Claim Rejections

Claims 1-19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Brown et al. (U.S. 6,100,208) in view of Roe et al. (U.S. 5,834,381).

Drawings

It is noted that no Patent Drawing Review (Form PTO-948) was received with the outstanding Office Action. Thus, Applicant must assume that the drawings are acceptable as filed.

New Claims

By this Amendment, Applicant has canceled claims 1-19 and has added new claims 20-33 to this application. It is believed that the new claims specifically set forth each element of Applicant's invention in full compliance with 35 U.S.C. § 112, and define subject matter that is patentably distinguishable over the cited prior art, taken individually or in combination.

The new claims are directed toward a compound fabric for making protective wear comprising: an upper layer (61) having at least one layer of a first non-woven fabric, the upper layer is water repellant and air permeable; a middle layer (62) of a woven fabric coated with a water proof and air permeable material, the woven fabric being one of a plain woven fabric and a knitted fabric; and a lower layer (63) having at least one layer of a second non-woven fabric, the middle layer being located between the upper layer and the lower layer, wherein the upper layer, the middle layer, and the lower layer being bonded together.

Other embodiments of the present invention include: the upper layer, the middle layer, and the lower layer are bonded together by ultrasonic welding; the upper layer, the middle layer, and the lower layer are bonded together by adhesive lamination; the first non-woven fabric and the second non-woven fabric are made of polypropylene fibers; the first non-woven fabric and the second non-woven fabric are made of polyethylene fibers; the woven fabric of the middle layer is the plain woven fabric; the woven fabric of the middle layer is the knitted fabric; the water proof and

air permeable material coating the middle layer is a water proof and air permeable resin; the water proof and air permeable resin is a polyurethane resin; the water proof and air permeable material coating the middle layer is a water proof and air permeable film; the water proof and air permeable film is a polyurethane film; the woven fabric of the middle layer is made of synthetic fibers; the synthetic fibers are polyester fibers; and the synthetic fibers are polyamide fibers.

The primary reference to Brown et al. teaches a non-woven first outer layer (12), a non-woven middle barrier layer (16) including a water impervious layer, and a non-woven or woven second outer layer (14).

Brown et al. do not teach the upper layer is water repellant and air permeable; a middle layer of a woven fabric coated with a water proof and air permeable material; nor do Brown et al. teach the woven fabric being one of a plain woven fabric and a knitted fabric.

The secondary reference to Roe et al. teaches a non-halogenated tri-laminate fabric and is cited for teaching a knitted or woven fabric scrim (14).

Roe et al. do not teach the upper layer is water repellant and air permeable; nor do Roe et al. teach a middle layer of a woven fabric coated with a water proof and air permeable material.

Even if the teachings of Brown et al. and Roe et al. were combined, as suggested by the Examiner, the resultant combination does not suggest: the upper layer is water repellant and air permeable; nor does the combination suggest a middle layer of a woven fabric coated with a water proof and air permeable material.

It is a basic principle of U.S. patent law that it is improper to arbitrarily pick and choose prior art patents and combine selected portions of the selected patents on the basis of Applicant's disclosure to create a hypothetical combination which allegedly renders a claim obvious, unless there is some direction in the selected prior art patents to combine the selected teachings in a manner so as to negate the patentability of the claimed subject matter. This principle was enunciated over 40 years ago by the Court of Customs and Patent Appeals in In re Rothermel and Waddell, 125 USPQ 328 (CCPA 1960) wherein the court stated, at page 331:

The examiner and the board in rejecting the appealed claims did so by what appears to us to be a piecemeal reconstruction of the prior art patents in the light of appellants' disclosure. ... It is easy now to attribute to this prior art the knowledge which was first made available by appellants and then to assume that it would have been obvious to one having the ordinary skill in the art to make these suggested reconstructions. While such a reconstruction of the art may be an alluring way to rationalize a rejection of the claims, it is not the type of rejection which the statute authorizes.

The same conclusion was later reached by the Court of Appeals for the Federal Circuit in Orthopedic Equipment Company Inc. v. United States, 217 USPQ 193 (Fed.Cir. 1983). In that decision, the court stated, at page 199:

As has been previously explained, the available art shows each of the elements of the claims in suit. Armed with this information, would it then be non-obvious to this person of ordinary skill in the art to coordinate these elements in the same manner as the claims in suit? The difficulty which attaches to all honest attempts to answer this question can be attributed to the strong temptation to rely on hindsight while undertaking this evaluation. It is wrong to use the patent in suit as a guide through the maze of prior art references, combining the right references in the right way so as to achieve the result of the claims in suit. Monday morning quarterbacking is quite improper when resolving the question of non-obviousness in a court of law.

In In re Geiger, 2 USPQ2d, 1276 (Fed.Cir. 1987) the court stated, at page 1278:

We agree with appellant that the PTO has failed to establish a *prima facie* case of obviousness. Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching suggestion or incentive supporting the combination.

Applicant submits that there is not the slightest suggestion in either Brown et al. or Roe et al. that their respective teachings may be combined as suggested by the Examiner. Case law is clear that, absent any such teaching or suggestion in the prior art, such a combination cannot be made under 35 U.S.C. § 103.

Neither Brown et al. nor Roe et al. disclose, or suggest a modification of their specifically disclosed structures that would lead one having ordinary skill in the art to arrive at Applicant's claimed structure. Applicant hereby respectfully submits that no combination of the cited prior art renders obvious Applicant's new claims.

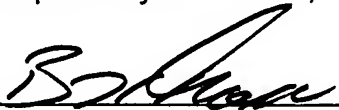
Summary

In view of the foregoing amendments and remarks, Applicant submits that this application is now in condition for allowance and such action is respectfully requested. Should any points remain in issue, which the Examiner feels could best be resolved by either a personal or a telephone interview, it is urged that Applicant's local attorney be contacted at the exchange listed below.

Respectfully submitted,

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